

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and over Defendants pursuant to Sections 106(a), 107(a), and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a), and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this judicial district pursuant to Sections 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a), 9613(b), and 28 U.S.C. §§ 1391(b), 1391(c) and 1395, because the claims arose, and the threatened or actual releases of hazardous substances occurred, in this district.

DEFENDANTS

4. The Massachusetts Department of Conservation and Recreation ("MA DCR") is a Massachusetts government entity with its primary offices at 251 Causeway Street, Boston, Massachusetts 02114.

5. The Massachusetts State Police ("MA State Police") is a Massachusetts government agency with its headquarters at 470 Worcester Road, Framingham, Massachusetts 01702.

STATUTORY AND REGULATORY BACKGROUND

6. CERCLA was enacted in 1980 to provide a comprehensive governmental mechanism for abating releases and threatened releases of hazardous substances and other pollutants and contaminants, and for funding the costs of such abatement and related enforcement activities, which are known as "response" actions. 42 U.S.C. §§ 9604(a), 9601(25).

7. Under Section 104(a)(1) of CERCLA, as amended:

(1) Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or

substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment

42 U.S.C. § 9604(a)(1).

8. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides, in addition to the President's authority to undertake response actions under Section 104 of CERCLA, that:

[W]hen the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may . . . secure such relief as may be necessary to abate such danger or threat

9. For CERCLA response actions and enforcement purposes, the Administrator of EPA is the President's delegate, as provided in operative Executive Orders, and, within certain limits, the Regional Administrators of EPA have been re-delegated this authority.

10. Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), provides in pertinent part:

The term "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.

11. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this Section- -

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed

of, [and]

- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, . . .

* * *

shall be liable for - -

- (A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan;
- (B) any other necessary costs of response incurred by any other person consistent with the national contingency plan; [and]
- (C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release . . .

SITE DESCRIPTION AND FACTUAL BACKGROUND

12. The Site is approximately 40.6 acres and consists of two parcels of land located at 7 - 11 Kelley Road in Plaistow, New Hampshire. The Site has frontage on Kelley Road and Old County Road. Kelley Brook, a tributary of the Merrimack River, abuts a portion of the Site.

13. The Site was the location of several oil-related operations, including waste oil processing and re-sale, fuel oil sale, contaminated soil processing, cold-mix asphalt production, anti-freeze recycling, and other industrial or commercial activities from the 1920s until operations ceased in 1994.

14. Contaminants have been detected in soils and groundwater at the Site, including but not limited to the following: volatile organic compounds ("VOCs"), such as alkylbenzenes, benzene, cis-1,2-dichloroethene, ethylbenzene, naphthalene, tetrachloroethene, 1,1,1-

trichloroethane, and trichloroethene; polychlorinated biphenyls ("PCBs"); lead; arsenic; and polynuclear aromatic hydrocarbons ("PAHs"), such as benzo(a)pyrene, benzo(a)anthracene, benzo(b)fluoranthene, and dibenzo(a,h)anthracene.

15. The contaminants referred to in Paragraph 14 are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

16. As a result of the release or the substantial threat of release of hazardous substances into the environment, EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future.

17. In July 1996, EPA and the New Hampshire Department of Environmental Services ("NHDES") jointly initiated a Time Critical Removal Action pursuant to CERCLA to remove tanks and drums of abandoned waste oil containing hazardous substances.

18. The Site was placed on the National Priorities List ("NPL"), 40 C.F.R. Part 300, Appendix B, in December 1996. The NPL is a national list of hazardous waste sites posing the greatest threat to health, welfare, and the environment. The NPL has been established pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a).

19. In February 2000, EPA initiated a Non-Time Critical Removal Action pursuant to CERCLA whereby a vapor enhanced extraction system and an interceptor trench were constructed at the Site.

20. From 1996 to 2001, a remedial investigation was performed by the NHDES under a cooperative agreement with EPA pursuant to CERCLA and the National Contingency Plan, 40 C.F.R. Part 300. In August 2001, the remedial investigation report ("RI Report") was issued and

summarized Site conditions and related potential human health and ecological risks.

21. Following the remedial investigation, NHDES, under a cooperative agreement with EPA pursuant to CERCLA and the National Contingency Plan, 40 C.F.R. Part 300, performed a feasibility study of potential cleanup options, and in January 2002, it issued a feasibility study report ("FS Report"). The FS Report presented the remedial alternatives evaluated to address Site conditions and potential risks.

22. In June 2002, EPA issued a proposed plan (the "Proposed Plan") for remedial action at the Site. After a notice and comment period, the remedial action plan was finalized in a detailed Record of Decision ("ROD") for the Site which was issued on January 9, 2004.

23. In performing response actions at the Site, EPA has incurred and will continue to incur response costs at or in connection with the Site. As of September 30, 2006, EPA had incurred response costs totaling approximately \$26.2 million, including interest. All of these costs have been incurred consistent with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), promulgated pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300.

GENERAL FACTUAL ALLEGATIONS

24. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

25. Each of the Defendants is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

26. There have been releases, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and threatened releases, of hazardous substances into the environment at or

from the Site.

27. As a result of the releases or threatened releases of hazardous substances at or from the Site, the United States has incurred and will continue to incur response costs, within the meaning of Sections 101(25) and 107 of CERCLA, 42 U.S.C. §§ 9601(25) and 9607, to respond to the releases or threatened releases of hazardous substances at the Site. The United States will continue to incur response costs in connection with the Site.

28. The response actions taken and to be taken at the Site are not inconsistent with the NCP.

CLAIMS FOR RELIEF:

FIRST CLAIM FOR RELIEF

29. Paragraphs 1 through 28 are realleged and incorporated herein by reference.

30. Each of the Defendants are persons within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

31. Each of the Defendants is a person, or a successor in interest to a person, who by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substance(s) owned or possessed by such person, which were disposed of at the Site.

32. Defendant MA DCR contracted, agreed, or otherwise arranged for disposal or treatment, or arranged with Beede Waste Oil for disposal or treatment of contaminated soil containing hazardous substances at or to the Site in 1990.

33. Defendant MA State Police contracted, agreed, or otherwise arranged for disposal or treatment, or arranged with Dennison Oil for disposal or treatment, of contaminated soil

containing hazardous substances at or to the Site in 1990 and 1991.

34. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendants are jointly and severally liable to the United States for response costs incurred and to be incurred in connection with the Site.

SECOND CLAIM FOR RELIEF

35. Paragraphs 1 through 34 are realleged and incorporated herein by reference.

36. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in relevant part:

[W]hen the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may . . . secure such relief as may be necessary to abate such danger or threat

37. The President, through his delegate, the Regional Administrator of EPA Region I, has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of a release or threatened release of a hazardous substance at and from the Site.

38. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), authorizes the United States to bring an action to secure such relief as may be necessary to abate the danger or threat at the Site.

39. EPA has determined that the remedy selected in the January 9, 2004 ROD is necessary to abate the danger or threat at the Site in terms of source control and management of the migration of contamination.

40. The Defendants are jointly and severally liable to undertake the remedial action identified in the ROD, which actions EPA has determined are necessary to abate the danger or threat at the Site.

PRAYER FOR RELIEF

Wherefore, Plaintiff, the United States of America, prays that this Court:

- A. Order Defendants, jointly and severally, to perform the remedial action for the Beede Waste Oil Superfund Site selected by EPA in the Record of Decision dated January 9, 2004;
- B. Order Defendants, jointly and severally, to reimburse the United States for all response costs incurred and to be incurred in connection with the Site, including interest thereon;
- C. Award the United States its costs and fees in this action; and
- D. Grant the United States such other relief as the Court deems just and proper.

Respectfully submitted,

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DATE: March 30, 2009

By: _____
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